

# Compulsory Smallpox Vaccination

## —The University City, Missouri, Case—

By NEWELL A. GEORGE, LL.M.

A recent court opinion in Missouri upholding the validity of a compulsory vaccination regulation indicates this subject is still a matter of active interest.

On August 5, 1919, the Board of Education of University City, Missouri, adopted for the first time a compulsory vaccination regulation. The regulation was amended by the school board on February 7, 1929. Since the 1929 change, the regulation has provided:

No child shall be received into any public school unless he has been vaccinated against smallpox and evidence thereof sufficient in the judgment of the superintendent has been presented.

Court action to test the validity of the regulation of the University City Board of Education was filed in January 1952 by the parents of twin daughters. When their daughters were 5 years old the parents presented them to the public school and sought to enroll them in kindergarten classes. Entrance was refused when the parents would not permit their daughters to be vaccinated. The following year the parents again sought to have their children enrolled in the public school and their entrance was again refused. The failure of the parents to have the twins vaccinated and the refusal of school authorities to permit their entrance precipitated the filing of a misde-

meanor charge against the parents for violating the compulsory school attendance law of the State of Missouri. This criminal case was tried on an agreed statement of facts and the parents were acquitted.

On January 29, 1952, a mandamus action was filed in the Circuit Court of the County of St. Louis to compel the members of the Board of Education of University City to enroll the twin girls in the public school system or to show cause why they should not be so enrolled. It was alleged that the parents were resident taxpayers of University City; that they were the parents of twin girls, then 7 years of age; that the children had been presented for enrollment on numerous occasions; that enrollment had been refused for the reason that the children had not been vaccinated against smallpox; that the children had not been so vaccinated because such vaccination would have impaired their health; that there was neither an actual nor a threatened epidemic of smallpox in the area; that the refusal of the school board to admit the children was unreasonable, arbitrary and capricious, and constituted an abuse of discretion; that the parents were unable to pay to have their children educated in a private school; that the parents faced criminal prosecution unless the children were admitted; and that they were without an adequate remedy at law unless the court granted the writ prayed for.

The answer of the school board admitted many of the parents' allegations. The school board, however, denied that vaccination would impair the health of the children; denied that

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there was no actual or threatened epidemic of smallpox in the area; denied that the refusal of the school board to admit the children was unreasonable, arbitrary and capricious, or was an abuse of discretion; and denied that the petitioners were without adequate remedy at law.

The school board further stated that at all times when the children were presented for enrollment the school board had in effect a rule requiring all children to be vaccinated against the disease of smallpox, but that a child could be admitted to the public schools if the child's parents presented to the proper authorities a written statement, signed by a licensed physician, to the effect that vaccination would be injurious to the health of the child. The answer further stated that the rule in effect had the approval of city, county, and other authorities; that the disease of smallpox is very contagious and results in serious illness and frequently death or permanent disfiguration; that it spreads rapidly and is readily contracted by groups of persons; and that it has been the public policy of the school and health authorities to require all persons to be immunized against the disease by vaccination in order to prevent epidemics from spreading throughout the United States. It was prayed that the alternative writ be quashed and that the pre-emptory writ be denied.

Because of the fundamental legal, medical, and social questions involved in this case, the attorney representing the school board secured as witnesses experts qualified to present the clinical, laboratory, and epidemiological knowledge of smallpox to the court.

The case was tried in the circuit court of St. Louis, Mo., April 28, 1952. Since the basic facts had been agreed upon, the attorney for the parents of the twins took only one hour for his presentation. The attorney for the school board then called his witnesses, all of whom were specialists in public health or in related fields. Each physician testified regarding the deadly and devastating effect of smallpox and the rapidity with which it spreads. Once infection occurs in a community, they advised the court, a person could become infected and transmit the disease before he himself noted symptoms.

One physician, after qualifying as an expert

witness, testified as to the effect of smallpox upon the human body, the improbability of a cure without injury to the person, and that the best method known to medical science to lessen the liability to infection from smallpox is by vaccination. Thereafter, upon stipulation by counsel, each witness, after qualifying as an expert, was asked if his testimony would agree with that previously given. All answered in the affirmative.

After the last witness had testified, counsel for the school board summarized the testimony of the expert witnesses. He emphasized the point, made repeatedly in testimony, that, although there was no outbreak of smallpox evident in the area, the surest way of preventing one is by vaccination before it occurs. The trial was then adjourned.

One week later the judge of the thirteenth circuit handed down his opinion:

## THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS

STATE OF MISSOURI, DIVISION No. 2

No. 194,776

STATE OF MISSOURI, EX REL., AND HENRY MOREY,  
ET UX., REALTORS

v.

WILLIS REALS, ET AL., RESPONDENTS

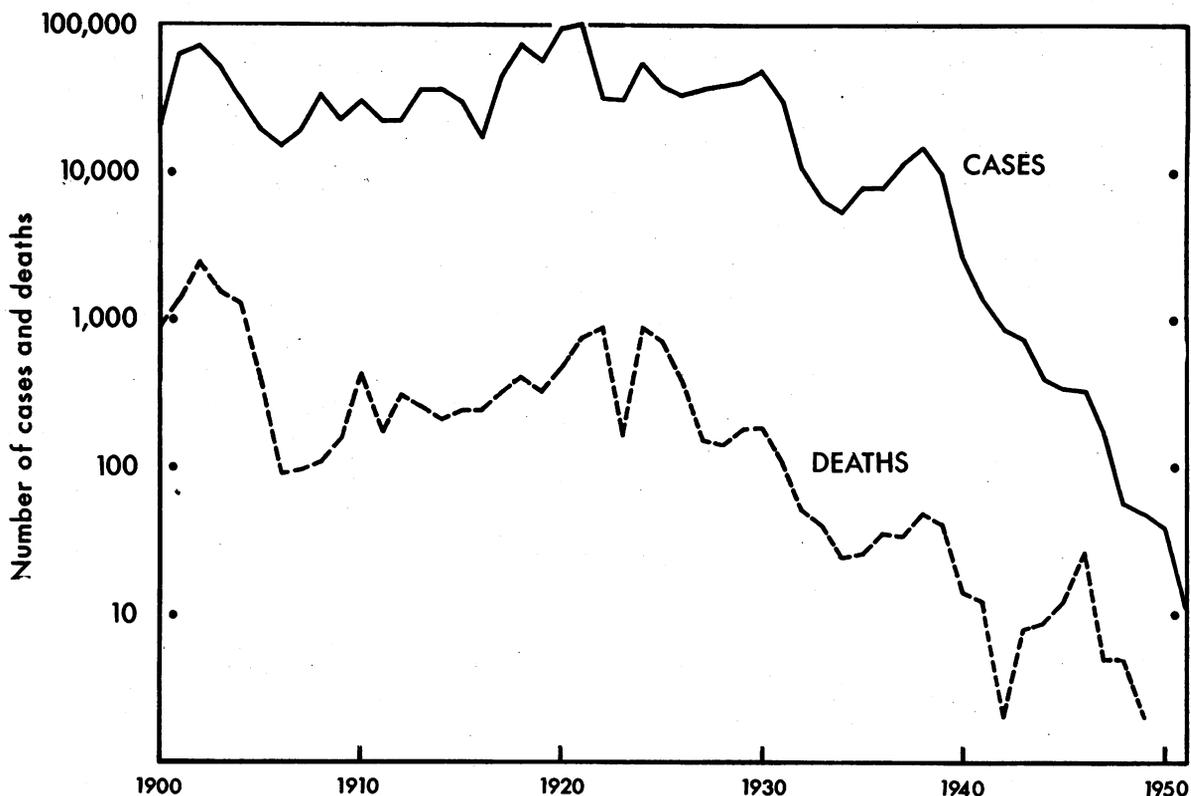
### *Memorandum*

"This is an action in mandamus brought by Henry Morey and Delma Morey, parents of twin girls now 7 years old, against the respondents, members of the Board of Education of the School District of the City of University City, to compel said school board to accept realtors' children into the University City schools without vaccination against smallpox.

"In the petition it is stated that 'said children have not been vaccinated against smallpox for the reason that such vaccination would impair the health of the children.' No evidence was introduced to support this allegation and it is therefore no longer an issue in the case.

"The only issue remaining for determination arises as a result of the allegation in the petition 'That such failure and refusal on the part of Respondents to admit the said children of the

### Smallpox cases and deaths in the United States, 1900–1950



Petitioners to the Public Schools of the City of University City, Missouri, is unreasonable, arbitrary, and capricious, and is an abuse of discretion on the part of Respondents.'

"It is uncontroverted that the schools of University City have an enrollment of more than 5,000 children, and that the school board now has, and for many years has had, a rule requiring all children to be, or to have been, vaccinated against smallpox before admitting them into the schools. It is also conclusively shown that there is not now any smallpox epidemic, nor any threat of such epidemic, in St. Louis County.

"The question for determination by this court is whether the rule requiring vaccination at a time and place where there is no epidemic or immediate threat of epidemic is an unreasonable requirement, or whether the school board in the exercise of a proper discretion may enforce such rule for the purpose of seeking to prevent such an epidemic from arising.

"The courts of our State have always recognized the right of the school boards of the

State to make reasonable rules for the regulation of their respective schools.

"Many years ago, long before the efficacy of vaccination as a means of prevention had been so generally accepted, Judge Rombauer in the case of *In re Rebenack*, 62 Mo. App., 8, said 'In the nature of things, it must rest with the boards of education to determine what regulations are needful for a safe and proper management of the schools, and for the physical and moral health of the pupils entrusted to their care. If such regulations are not oppressive or arbitrary, the courts cannot, or should not, interfere.'

"It is only in the case of an abuse of discretionary powers of a board invested with authority to regulate, that the court will undertake to supervise official discretion. How far the right to exclude one for the good of the many should be carried is also a question addressed to the discretion of the school board; and when that discretion is honestly, reasonably, and impartially exercised the courts should not interfere.

"In the trial of this case the court had the

benefit of the opinions of a number of outstanding specialists in the field of public health and the control of communicable diseases. It was their testimony, without exception, that while there is no known cure for smallpox, the remarkable reduction in the cases of that dread disease is attributable to the present general acceptance and the proven preventive effectiveness of vaccination, and that any relaxation of rules requiring such vaccination would to the extent of such relaxation increase the danger of the introduction of the disease into the schools.

"The doctor in charge of the Bureau of Communicable Diseases of the Missouri Department of Health testified that in 1937 there were 1,751

reported cases of smallpox in our State. From that year the number of reported cases dropped markedly and in the past 9 years the highest number of reported cases for any year was 11. Indeed he testified that in 1950 and 1951 only two cases were reported for each year.

"In the light of testimony so overwhelming and statistical information so convincing of the protective value of vaccination against this once prevalent disease, the court must hold that the respondents are wholly within the exercise of a sound discretion in adhering to their rule requiring vaccination of children in their school system."

*John A. Witthaus, Judge.*



### High-Temperature Short-Time Pasteurization

16 mm., sound, black and white, 21 minutes, 1951.

**Audience:** Milk sanitarians and control authorities responsible for milk sanitation programs and policies.

**Available:** Loan—Communicable Disease Center, Public Health Service, Box 185, Chamblee, Ga. Purchase—Castle Film Division, United World Films, 1445 Park Avenue, New York 29, N. Y.

This film was designed to aid in training inspection personnel in the proper procedures for testing the functioning and accuracy of high-temperature, short-time pasteurization controls, in accordance with the regulations of the standard milk ordinance.

After stressing the fact that milk pasteurized by the high-temperature, short-time method is absolutely safe only if it is heated to at least 161° F. for a period not shorter than 15 seconds, this motion picture depicts the procedures, theory, and observations enabling a milk sanitarian to inspect, test, and understand the complex equipment that controls the

pasteurization of milk by this method. The main tests and procedures shown and explained are: (1) checking the accuracy of the indicating thermometer; (2) testing the functioning of recorder-controller and sealing adjustment in conformance with regulations; (3) seeing that the pasteurized milk pressure in the regenerator is higher than that of the raw milk; and (4) checking the accuracy of the diversion valve and calculating the duration of the holding time.

### Biology of Domestic Flies

16 mm., sound, black and white, 9 minutes, 1952.

**Audience:** Professional, scientific, and technical personnel of health departments and other professional personnel engaged in or interested in community fly control.

**Available:** Loan—Federal Security Agency, Public Health Service, Communicable Disease Center, Box 185, Chamblee, Ga. Purchase—United World Films, Inc., 1445 Park Avenue, New York 29, N. Y.

This film, one of the community fly control series produced by the Communicable Disease Center, Public Health Service, supplies information on the habits of the most common varieties of flies in order to facilitate community fly control pro-

grams. The content of the film covers the following subjects:

1. Life cycle of the housefly.
2. The characteristics of domestic flies (houseflies, blowflies, fleshflies, and stableflies) compared and contrasted.
3. Typical breeding places and radius of areas of control and measures as determined by the flight range of flies.
4. Public health implications of the fly's mechanisms for transmitting disease organisms and filth. (Flies ingest only liquids. They regurgitate bacteria carrying liquids in order to dissolve and make available solid foods. They also deposit germ-laden excreta—fly specks—on food and other surfaces.)
5. Habitual fly resting places under varying conditions of time and weather and how familiarity with fly habits aids effective control through residual and space spraying with insecticides.
6. The development of strains of flies resistant to insecticides after a series of several spraying campaigns.

**NOTE:** Filmstrip No. F80, "Biology of Domestic Flies," 35 mm., sound, color, 9 minutes, 81 frames, released 1952, is also available for presenting the same material as is shown in this motion picture.